



OFFICE of *the* ATTORNEY GENERAL  
GREG ABBOTT

June 30, 2003

Ms. Rebecca L. Payne  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-4437

Dear Ms. Payne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183468.

The Texas Department of Human Services (the "department") received a request for information pertaining to Visiting Angels Living Assistance Services. You state that information that constitutes reports, records, and working papers used or developed in an investigation under section 142.009 of the Health and Safety Code will be withheld in accordance with the previous determination issued to the department in Open Records Letter No. 2001-5348 (2001). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-9 (2001) (delineating instances in which attorney general decision constitutes previous determination under Gov't Code § 552.301). Accordingly, we need not further address the public nature of that information. You state that you will release other requested information. You claim that some of the remaining requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim the submitted licensing information contains criminal history record information protected under section 142.004 of the Health & Safety Code.<sup>1</sup> Section 142.004(d) provides as follows:

Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

Health & Safety Code § 142.004(d). Based on your representations and our review of the submitted information, we agree that the answers to questions concerning criminal convictions constitute confidential information as they relate to the competence of an applicant. *See* Health & Safety Code § 142.004(d). Therefore, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code.<sup>2</sup>

Next, you contend that the social security numbers contained in the submitted information are confidential under section 552.101 in conjunction with section 231.302 of the Family Code. In relevant part, section 231.302 states the following:

(c) To assist in the administration of laws relating to child support enforcement under Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601-617 and 651-669):

(1) each licensing authority shall request and each applicant for a license shall provide the applicant's social security number[.]

...

(e) Except as provided by Subsection (d), a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the

---

<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential.

<sup>2</sup>As section 142.004(d) is dispositive, we need not address your claims under common-law privacy.

provisions of Part A or D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq).

...

(g) In this section, "licensing authority" has the meaning assigned by Section 232.001.

Fam. Code § 231.302(c)(1), (e), (g). You inform us that the department is a licensing authority as defined by section 232.001 of the Family Code. *See* Fam. Code § 232.001(2) (defining "licensing authority" as a department . . . of the state . . . that issues a license). Further, you explain that, in this instance, disclosure of the social security numbers would not be for a permitted purpose under section 231.302(e) of the Family Code. *See* Fam. Code § 231.302(e). Based on your representations and a review of the information, we conclude the department must withhold the social security numbers you have highlighted in accordance with section 552.101 in conjunction with section 231.302(e) of the Family Code.

The submitted information also contains an e-mail address obtained from a member of the public. Section 552.137 makes certain e-mail addresses confidential, and provides:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The department must, therefore, withhold the e-mail address of a member of the public under section 552.137.

In summary, the department may withhold information constituting reports, records, and working papers used or developed during investigations conducted under section 142.009 of the Health and Safety Code in accordance with the previous determination issued to the

department in Open Records Letter No. 2001-5348 (2001). The department must withhold the following information, which you have marked: 1) information related to the competence of an applicant, under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code; 2) the social security numbers under section 552.101 in conjunction with section 231.302(e) of the Family Code; and (3) the e-mail address of a member of the public under section 552.137. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 183468

Enc. Submitted documents

c: Ms. Faith Sproul  
4010 East Valley Drive  
Missouri City, Texas 77459  
(w/o enclosures)